

1980

c 33 Assignments and Preferences Act

Ontario

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CHAPTER 33

Assignments and Preferences Act

1. In this Act, "judge" means a judge of the county or district court of the county or district in which the assignment is required to be registered. R.S.O. 1970, c. 34, s. 1.

Interpre-
tation

2. Where a judge is disqualified to act in a matter arising under this Act, a judge of the county or district court of an adjoining county or district has jurisdiction to act in his place. R.S.O. 1970, c. 34, s. 2.

Where judge
disqualified

3. Every confession of judgment, *cognovit actionem* or warrant of attorney to confess judgment given by a person, being at the time in insolvent circumstances or unable to pay his debts in full or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor with intent thereby to defeat, hinder, delay or prejudice his creditors wholly or in part, or to give one or more of his creditors a preference over his other creditors or over any one or more of them, is void as against the creditors of the person giving the same and is ineffectual to support any judgment or execution. R.S.O. 1970, c. 34, s. 3.

Nullity of
certain con-
fessions of
judgment,
etc.

4.—(1) Subject to section 5, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice his creditors, or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced.

Nullity of
gifts, trans-
fers, etc.,
made with
intent to
defeat or
prejudice
creditors

(2) Subject to section 5, every such gift, conveyance, assignment or transfer, delivery over or payment made by a person being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, to or for a creditor with the intent to give such creditor an unjust preference over his other creditors or over any one or more of them is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

Unjust
preferences

When there is presumption of intention if transaction has effect of unjust preference

(3) Subject to section 5, if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall, in and with respect to any action or proceeding that, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction, be presumed *prima facie* to have been made with the intent mentioned in subsection (2), and to be an unjust preference within the meaning of this Act whether it be made voluntarily or under pressure.

Idem

(4) Subject to section 5, if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of his creditors, be presumed *prima facie* to have been made with the intent mentioned in subsection (2), and to be an unjust preference within the meaning of this Act whether it be made voluntarily or under pressure.

"Creditor" for certain purposes to include surety and endorser

(5) The word "creditor" in the fifth line of subsection (2), in the second line of subsection (3), and in the second line of subsection (4), includes any surety and the endorser of any promissory note or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange, in respect of which such suretyship was entered into or such endorsement was given, become a creditor of the person giving the preference within the meaning of those subsections. R.S.O. 1970, c. 34, s. 4.

Assignments for benefit of creditors and *bona fide* sales, etc., protected

5.—(1) Nothing in section 4 applies to an assignment made to the sheriff of the county or district in which the debtor resides or carries on business or, with the consent of a majority of his creditors having claims of \$100 and upwards computed according to section 24, to another assignee resident in Ontario, for the purpose of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts, nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to an innocent purchaser or person, nor to any payment of money to a creditor, nor to any *bona fide* conveyance, assignment, transfer or delivery over of any goods or property of any kind, that is made in consideration of a present actual *bona fide* payment in money, or by way of security for a present actual *bona fide* advance of money, or that is made in consideration of a present actual *bona fide* sale or delivery of goods or other property where the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

(2) In case of a valid sale of goods or other property and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor under circumstances that would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, is void as respects the creditor to whom it is made.

Transfer to creditor of consideration for sale invalid

(3) Every assignment for the general benefit of creditors that is not void under section 4, but is not made to the sheriff nor to any other person with the prescribed consent of creditors, is void as against a subsequent assignment that is in conformity with this Act, and is subject in other respects to the provisions thereof until and unless a subsequent assignment is executed in accordance therewith.

Effect of assignment not in accordance with Act

(4) Where a payment has been made that is void under this Act and any valuable security was given up in consideration of the payment, the creditor is entitled to have the security restored or its value made good to him before, or as a condition of, the return of the payment.

Security given up upon void payment to be returned

(5) Nothing in this Act,

Exceptions:

(a) affects the *Wages Act* or prevents a debtor providing for payment of wages due by him in accordance with that Act;

wages R.S.O. 1980, c. 526

(b) affects any payment of money to a creditor where the creditor, by reason or on account of the payment, has lost or been deprived of, or has in good faith given up, any valid security that he held for the payment of the debt so paid unless the security is restored or its value made good to the creditor;

surrender of securities

(c) applies to the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors; or

exchange of securities

(d) invalidates a security given to a creditor for a pre-existing debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the *bona fide* belief that the advance will enable the debtor to continue his trade or business and to pay his debts in full. R.S.O. 1970, c. 34, s. 5.

certain securities to be valid

6. No person, other than a permanent and *bona fide* resident of Ontario, shall be assignee under an assignment within

Residence of assignee

this Act, nor shall any assignee delegate his duties as assignee to or appoint as deputy any person who is not a permanent and *bona fide* resident of Ontario, and no charge shall be made or recoverable against the assignor or his estate for any services or other expenses of any such assignee, deputy or delegate of any assignee who is not a permanent and *bona fide* resident of Ontario. R.S.O. 1970, c. 34, s. 6.

Form of assignment for general benefit of creditors

7. Every assignment made under this Act for the general benefit of creditors, if the property is described in the words "all my personal property that may be seized and sold under execution and all my real estate, credits and effects", or in words to the like effect, vests in the assignee all the real and personal estate, rights, property, credits and effects, whether vested or contingent, belonging to the assignor at the time of the assignment, except such as are by law exempt from seizure or sale under execution, subject, however, as regards land, to the *Registry Act* and the *Land Titles Act*. R.S.O. 1970, c. 34, s. 7.

R.S.O. 1980, cc. 445, 230

All assignments for general benefit of creditors to be subject to this Act

8. Every assignment for the general benefit of creditors, whether it is or is not expressed to be made under or in pursuance of this Act and whether the assignment does or does not include all the real and personal estate of the assignor, vests the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and the assignment and the property thereby assigned is subject to all the provisions of this Act, and the same applies to the assignee named in such assignment. R.S.O. 1970, c. 34, s. 8.

How claims are to rank where different estates

9. If an assignor executing an assignment under this Act for the general benefit of his creditors owes debts both individually and as a member of a partnership or as a member of different partnerships, the claims rank first upon the estate by which the debts they represent were contracted and only rank upon the other or others after all the creditors of such other estate or estates have been paid in full. R.S.O. 1970, c. 34, s. 9.

Appointment of substituted assignee

10.—(1) A majority in number and value of the creditors who have proved claims to the amount of \$100 or upwards may substitute for the sheriff, or for an assignee under an assignment to which subsection 5 (3) applies, a person residing in the county or district in which the assignor resided or carried on business at the time of the assignment.

Removal, substitution or addition

(2) An assignee may be removed and another substituted or an additional assignee appointed by the judge.

(3) Where an assignee dies, a new assignee may be appointed in the manner provided by subsection (2). Death of assignee

(4) Where a new or additional assignee is appointed, the estate vests in him or in him jointly with his co-assignee without a conveyance or transfer, and he shall register a verified copy of the resolution of the creditors or of the order appointing him in the office in which the assignment was registered. Effect on estate

(5) A verified copy of the resolution or of the order may be registered in the proper land registry office and the registration thereof has the same effect as the registration of a conveyance. R.S.O. 1970, c. 34, s. 10. Registration

11.—(1) Except as otherwise provided in this section, the assignee has the exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors or in violation of this Act. Rights of assignee

(2) Where a creditor desires to cause any proceeding to be taken that, in his opinion, would be for the benefit of the estate and the assignee under the authority of the creditors or inspectors refuses or neglects to take such proceeding after being required so to do, the creditor has the right to obtain an order of the judge authorizing him to take the proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the judge prescribes, and thereupon any benefit derived from the proceeding, to the extent of his claim and full costs, belongs exclusively to the creditor instituting the proceeding for his benefit, but, if before such order is obtained the assignee signifies to the judge his readiness to institute the proceeding for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, belongs to the estate. R.S.O. 1970, c. 34, s. 11. Right of creditor in certain cases if assignee refuses

12.—(1) In the case of a gift, conveyance, assignment or transfer of any property, real or personal, that is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made has sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, Following proceeds of property fraudulently transferred

and such right to seize and recover belongs not only to an assignee for the general benefit of the creditors of the debtor but, where there is no such assignment, to all creditors of the debtor.

Taking proceeds under execution

(2) Where there is no assignment for the benefit of creditors and the proceeds are of such a character as to be seizable under execution, they may be seized under the execution of any creditor and are subject to the *Creditors' Relief Act*.

R.S.O. 1980, c. 103

Creditor suing on behalf of himself and other creditors

(3) Where there is no assignment for the benefit of creditors and whether the proceeds are or are not of such a character as to be seizable under execution, an action may be brought therefor by a creditor, whether an execution creditor or not, on behalf of himself and all other creditors, or such other proceedings may be taken as are necessary to render the proceeds available for the general benefit of the creditors.

Protection of innocent purchasers

(4) This section does not apply as against innocent purchasers of the property. R.S.O. 1970, c. 34, s. 12.

Assignments take precedence over attachments, etc.

13. An assignment for the general benefit of creditors under this Act takes precedence over attachments, garnishee orders, judgments, executions not completely executed by payment, and orders appointing receivers by way of equitable execution subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands or to the lien, if any, for the costs of the creditor who has the first execution in the sheriff's hands. R.S.O. 1970, c. 34, s. 13.

Waiver of claims by Crown

14. Where the Crown has a claim in respect of estreated bail against the estate of a person who makes an assignment for the benefit of his creditors, the Lieutenant Governor in Council may waive any preference in respect of such claim that the Crown has against such estate by virtue of its prerogative right. R.S.O. 1970, c. 34, s. 14.

Amendment by judge

15. No advantage shall be obtained by any creditor by reason of any mistake, defect or imperfection in an assignment under this Act for the general benefit of creditors if the assignment can be amended or corrected, and any such mistake, defect or imperfection shall be amended by the judge on the application of the assignee or of any creditor of the assignor, and on such notice to other parties concerned as the judge thinks reasonable, and the amendment, when made, shall be related back to the date of the assignment, but not so as to prejudice the rights of innocent purchasers. R.S.O. 1970, c. 34, s. 15.

16.—(1) A notice of the assignment shall, forthwith after the delivery thereof to him or his assent thereto, be published by the assignee at least once in *The Ontario Gazette* and not less than twice in a newspaper having a general circulation in the county or district in which the property assigned is situate.

Publishing notice of assignment

(2) The assignment or a copy thereof shall also, within five days from the execution thereof, be registered by the assignee, together with an affidavit of a witness thereto of the due execution of the assignment, in the office of the clerk of the county or district court of the county or district in which the assignor, if a resident in Ontario, resided at the time of the execution thereof, or if not a resident then in the office of the clerk of the county or district court of the county or district where the personal property so assigned or where the principal part thereof is at the time of the execution of the assignment, and the clerk shall number and enter the assignments and endorse thereon the time of receiving them, and they shall be open for the inspection of all persons desiring to inspect them.

Registering assignment

(3) The clerk is entitled to the same fees for services as if the assignment had been registered under the *Personal Property Security Act*.

Fees of clerk
R.S.O. 1980, c. 375

(4) For the purposes of subsection (2), the Provisional County of Haliburton shall be deemed part of the County of Victoria.
R.S.O. 1970, c. 34, s. 16.

Haliburton

17.—(1) If the notice is not published as provided by section 16 or if the assignment is not registered within five days from the delivery thereof to the assignee or his assent thereto, the assignee is liable to a penalty of \$10 for each day during which the default continues.

Penalty for neglecting publication or registration

(2) The burden of proving the time of such delivery or assent is upon the assignee.

Onus of proof

(3) Where the assignment is made to a sheriff, he shall not incur the penalty unless he has been paid or tendered the cost of advertising and of registering the assignment, nor is he bound to act under the assignment until his costs in that behalf are paid or tendered to him. R.S.O. 1970, c. 34, s. 17.

Liability of sheriff

18. If the assignment is not registered or notice thereof is not published, the judge may, upon the application of any person interested in the assignment, by order enforce the registration of the assignment or the publication of the notice. R.S.O. 1970, c. 34, s. 18.

Compelling publication and registration

Omission
to publish,
etc.

19. The omission to publish or register as required by section 16 does not, nor does any irregularity in the publication of registration, invalidate the assignment. R.S.O. 1970, c. 34, s. 19.

Duty to
call meeting
of creditors

20.—(1) It is the duty of the assignee immediately to inform himself, by reference to the assignor and his records of account, of the names and residences of the assignor's creditors, and, within five days from the date of the assignment, to call a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate by sending by registered mail to every creditor known to him a notice calling the meeting to be held in his office or some other convenient place to be named in the notice not later than twelve days after the mailing thereof, and by advertisement in *The Ontario Gazette*.

Other
meetings

(2) All other meetings to be held shall be called in like manner. R.S.O. 1970, c. 34, s. 20.

Appointment
of inspectors

21.—(1) The creditors at any meeting may appoint one or more inspectors who shall superintend and direct the proceedings of the assignee in the management and winding up of the estate, and the creditors may also at any subsequent meeting for that purpose revoke the appointment of any inspector.

Appointment
of another
inspector

(2) Where the appointment of an inspector is revoked or where an inspector dies, resigns his office or leaves Ontario, the creditors at any meeting may appoint another inspector to take his place.

Inspector
not to
purchase
assets

(3) An inspector shall not directly or indirectly purchase any part of the stock in trade, debts or other assets of the assignor. R.S.O. 1970, c. 34, s. 21.

Meeting of
creditors by
request of
majority
thereof

22.—(1) In the case of a request in writing signed by a majority of the creditors having claims duly proved of \$100 and upwards, computed according to section 24, it is the duty of the assignee, within two days after receiving the request, to call a meeting of the creditors for a day not later than twelve days after he receives the request, and in case of default the assignee shall incur a penalty of \$25 for every day after the expiration of the time limited for calling the meeting until it is called.

Power of
judge

(2) In case a sufficient number of creditors do not attend the meeting mentioned in section 20 or fail to give directions with reference to the disposal of the estate, the judge may give such directions as he considers necessary for that purpose. R.S.O. 1970, c. 34, s. 22.

23. At any meeting of creditors, the creditors may vote in person or by proxy authorized in writing, but no creditor whose vote is disputed is entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the amount and nature thereof. R.S.O. 1970, c. 34, s. 23.

Voting at
meeting

24.—(1) Subject to section 10, all questions at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:

Scale of
votes

1. For every claim of or over \$100 and not exceeding \$200, one vote.
2. For every claim over \$200 and not exceeding \$500, two votes.
3. For every claim over \$500 and not exceeding \$1,000, three votes.
4. For every additional \$1,000 or fraction thereof, one vote.

(2) No person is entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this does not apply to persons acquiring notes, bills or other securities upon which they are liable.

Upon claims
acquired
after
assignment

(3) In the case of a tie, the assignee or, if there are two assignees, the assignee nominated for that purpose by the creditors or by the judge, if none has been nominated by the creditors, has a casting vote.

Casting
vote

(4) Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof, and if such security is on the estate of the assignor or on the estate of a third person for whom the assignor is only secondarily liable, he shall put a specified value thereon and the assignee, under the authority of the creditors, may either consent to the creditor ranking for the claim after deducting such valuation or he may require from the creditor an assignment of the security at an advance of 10 per cent upon the specified value to be paid out of the estate as soon as the assignee has realized the security, and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor is the amount for which he shall rank and vote in respect of the estate.

Valuing
securities

Right to
revalue in
certain cases

(5) If a creditor's claim is based upon a negotiable instrument upon which the assignor is only indirectly or secondarily liable and that is not mature or exigible, the creditor shall be considered to hold security within the meaning of this section and shall put a value on the liability of the person primarily liable thereon as being his security for the payment thereof, but after the maturity of such liability and its non-payment he is entitled to amend his claim and revalue his security.

Where
creditor
holding
security
fails to
value it

(6) Where a person claiming to be entitled to rank on the estate holds security for his claim, or any part thereof, of such a nature that he is required by this Act to value the security and he fails to value it, the judge, upon summary application by the assignee or by any other person interested in the estate, of which application at least three days notice shall be given to the claimant, may order that, unless a specified value be placed on the security and the assignee is notified in writing within a time to be limited by the order, the claimant is, in respect of the claim, or the part thereof for which the security is held in case the security is held for part only of the claim, wholly barred of any right to share in the proceeds of the estate.

Conse-
quences of
neglect of
order

(7) If a specified value is not placed on the security or the assignee is not notified in writing according to the exigency of the order or within such further time as the judge by subsequent order allows, the claim, or the part, as the case may be, is wholly barred as against the estate, but without prejudice to the liability of the assignor therefor. R.S.O. 1970, c. 34, s. 24.

Proof of
claim

25.—(1) Every person claiming to be entitled to rank on the estate shall furnish to the assignee particulars of his claim proved by affidavit and such vouchers as the nature of the case admits.

Limiting
time for
proof of
claim

(2) Where a person claiming to be entitled to rank on the estate does not, within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim as provided by this and the preceding sections, the judge upon summary application by the assignee or by any other person interested in the estate, of which application at least three days notice shall be given to the claimant, may order that unless the claim is proved to the satisfaction of the judge within a time to be limited by the order, the claimant shall be deemed to be no longer a creditor of the estate and is wholly barred of any right to share in the proceeds thereof.

(3) If the claim is not so proved within the time so limited or within such further time as the judge by subsequent order allows, it is wholly barred and the assignee is at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the assignor therefor.

Consequences of neglect to prove claim

(4) Subsections (2) and (3) do not interfere with the protection afforded to assignees by section 53 of the *Trustee Act*.

Not to interfere with R.S.O. 1980, c. 512

(5) A person whose claim has not accrued due is nevertheless entitled to prove under the assignment and to vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time that has to run until the claim becomes due. R.S.O. 1970, c. 34, s. 25.

Creditor may prove claim not due

26.—(1) At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may be served by the assignee upon the claimant.

Contestation of claim

(2) Within thirty days after the receipt of the notice, or within such further time as the judge allows, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action, or of the summons in case the action is brought in a small claims court, shall be served on the assignee, and in default of such action being brought and writ or summons served within the time limited the claim to rank on the estate is forever barred.

Limitation

(3) The notice by the assignee shall contain the name and place of business of a solicitor upon whom service of the writ or summons may be made, and service upon him shall be deemed sufficient service.

Service on solicitor of assignee

(4) Where prior to the assignment an action has been commenced against the assignor and is pending at the time of the assignment, the assignee may, by notice served upon the plaintiff in the action, require him to proceed, and he is bound to proceed in that action to establish his claim, instead of bringing an action against the assignee as provided for by subsection (2), and the plaintiff may thereupon apply to the court in which the action is brought for an order adding the assignee as a party defendant in the action, and the assignee may be so added upon such terms as to the costs that may be subsequently incurred as the court or a judge thereof, or the judge making the order, directs. R.S.O. 1970, c. 34, s. 26.

Right of assignee to compel plaintiff to proceed with action against assignor

Procedure where assignee is satisfied but assignor desires to dispute

27.—(1) If the assignee is satisfied with the proof adduced in support of a claim but the assignor disputes it, the assignor shall do so by notice in writing to the assignee, stating the grounds upon which he disputes the claim, and the notice shall be given within ten days after the assignor is notified in writing by the assignee that he is satisfied with the proof adduced and not afterwards unless by leave of the judge.

Where assignee does not require action to be brought

(2) If upon receiving such notice of dispute the assignee does not consider it proper to require the claimant to bring an action to establish his claim, he shall notify the assignor in writing of the fact, and the assignor may thereupon, and within ten days of his receiving such notice, apply to the judge for an order requiring the assignee to serve a notice of contestation.

Conditions

(3) The order shall be made only if, after notice to the assignee, the judge is of opinion that there are good grounds for contesting the claim.

Where decision of assignee final

(4) If the assignor does not make such an application, the decision of the assignee is, as against him, final and conclusive.

Decision of judge on validity of claim

(5) If upon the application the claimant consents in writing, the judge may in a summary manner decide the question of the validity of the claim.

Intervention by assignor at trial

(6) If an action is brought by the claimant against the assignee, the assignor may intervene at the trial either personally or by counsel for the purpose of calling and examining or cross-questioning witnesses. R.S.O. 1970, c. 34, s. 27.

Retention of assets in Ontario and deposit of moneys

28.—(1) No property or assets of an estate assigned under this Act shall be removed out of Ontario without the order of the judge, and the proceeds of the sale of any such property or assets and all moneys received on account of any estate shall be deposited by the assignee in a chartered bank in Ontario and shall not be withdrawn or removed without the order of the judge, except in payment of dividends and charges incidental to winding up the estate.

Penalty

(2) An assignee or any person acting in his stead who contravenes this section is liable to a penalty of \$500.

Application of penalty

(3) One-half of the penalty goes to the person suing therefor and the other half belongs to the estate.

(4) In default of payment of the penalty and all costs incurred in an action or proceeding for the recovery thereof within the time limited by the judgment, the court in which the action is brought may order that such assignee or person may be imprisoned for any period not exceeding thirty days, and such assignee or person is disqualified from acting as assignee of any estate while the default continues. R.S.O. 1970, c. 34, s. 28.

Imprisonment in default of payment of penalty

29. Upon the expiration of one month from the first meeting of creditors or as soon as may be thereafter and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as assignee and of the position of the estate. R.S.O. 1970, c. 34, s. 29.

Accounts to be kept accessible

30. The law of set-off applies to all claims made against the estate, and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim for set-off is affected by this or any other Act respecting frauds or fraudulent preferences. R.S.O. 1970, c. 34, s. 30.

Set-off

31. As large a dividend as can be paid with safety shall be paid by every assignee within twelve months from the date of the assignment, and earlier if required by the inspectors, and thereafter a further dividend shall be paid every six months and more frequently if required by the inspectors, until the estate is wound up and disposed of. R.S.O. 1970, c. 34, s. 31.

Dividends, when to be paid

32. As soon as a dividend sheet is prepared, notice thereof shall be given by registered mail to each creditor, enclosing an abstract of receipts and disbursements, showing what interest has been received by the assignee for money in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor, and after the expiry of eight days from the date of mailing the notice, abstract and dividend sheet, dividends on all claims not objected to within that period shall be paid. R.S.O. 1970, c. 34, s. 32.

Notice of dividend sheet

33.—(1) The assignee may take the proceedings authorized by section 32 of the *Creditors' Relief Act* to be taken by a sheriff, and in that case sections 32 and 33 of that Act apply with necessary modifications to proceedings for the distribution of money and determination of claims arising under an assignment

Distributing moneys and determining claims
R.S.O. 1980, c. 103

made under this Act, with the substitution of "assignee" for "sheriff", but this section does not relieve the assignee from mailing to each creditor the abstract and other information required by section 32 of this Act to be sent to creditors so far as the same is not contained in the list sent by him under section 32 of the *Creditors' Relief Act*.

R.S.O. 1980,
c. 103

To what
judge
application
to be made

(2) A judge of the county or district court of the county or district where the assignment is required to be registered is the judge to whom applications under this section shall be made. R.S.O. 1970, c. 34, s. 33.

Remunera-
tion of
assignee

34. The assignee shall receive such remuneration as is voted to him by the creditors at a meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors, in case the creditors fail to provide therefor, subject to review by the judge upon complaint of the assignee or of any creditor. R.S.O. 1970, c. 34, s. 34.

Where re-
munera-
tion not fixed
before the
final
dividend

35. Where the remuneration of the assignee has not been fixed under section 34 before the final dividend, the assignee may insert in the final dividend sheet, and retain as his remuneration, a sum not exceeding 5 per cent of the cash receipts, subject to review by the judge, but no application by the assignee to review the allowance shall be entertained unless the question of his remuneration has been brought before a meeting of creditors competent to decide the same before the preparation of the final dividend sheet. R.S.O. 1970, c. 34, s. 35.

Remunera-
tion of
inspectors

36.—(1) An assignee shall not make any payment or allowance to an inspector beyond his actual and necessary travelling expenses in and about his duties as inspector except under the authority of a resolution of the creditors passed at a meeting regularly called fixing the amount thereof, and in the notice calling the meeting the fixing of the remuneration of the inspectors shall be specially mentioned as one of the subjects to be brought before the meeting.

Limit of
allowance

(2) An inspector shall not be allowed more than \$4 a day besides his actual travelling expenses. R.S.O. 1970, c. 34, s. 36.

Examination
of assignor
or
employees

37.—(1) Upon a resolution passed by a majority vote of the creditors present or represented at a meeting of creditors regularly called, or upon the written request of a majority of the inspectors, or upon an order made by the judge, the assignee may examine upon oath before a master, local master, local registrar, judge of the county or district court, special examiner, official referee or any other person

named in the order, the assignor or any person who is or has been his agent, clerk, servant, officer or employee of any kind, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of his debts or liabilities existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him, and the person examined may be required by the assignee to produce upon such examination any property, book, document or paper in his custody, power or control.

(2) Unless otherwise ordered, the examination shall take place in the county or district in which the person to be examined resides. Where examination to take place

(3) The rules and procedure of the Supreme Court as to the examination of a judgment debtor, or any clerk or employee or former clerk or employee of a judgment debtor, so far as may be, apply to an examination held under subsection (1). R.S.O. 1970, c. 34, s. 37. Procedure on examination

38. Any person who has or is believed or suspected of having in his possession or power any book, document or paper of any kind relating in whole or in part to the assignor, his dealings or property and who refuses or fails to produce such book, document or paper for the inspection of the assignee within four days after demand in writing by the assignee may by order of the judge be examined before the judge or any of the officers mentioned in section 37 touching such book, document or paper, and he is subject to the same consequences in the case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make such production as is mentioned in section 40. R.S.O. 1970, c. 34, s. 38. Examination of persons having custody of property of assignor

39. If the assignor does not attend for examination and does not allege a sufficient excuse for not attending or, if attending, he refuses to disclose his property or his transactions respecting his property or does not make satisfactory answers respecting his property or if it appears from such examination that the assignor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, the judge may order the assignor to be committed to a correctional institution in the county or district in which he resides for any period not exceeding twelve months. R.S.O. 1970, c. 34, s. 39. When assignor does not attend or refuses to answer questions

Compelling
attendance
and
production
of books

40. Any person, other than the assignor, liable to be examined is subject to the same consequences in case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make production as a witness in an action in the Supreme Court. R.S.O. 1970, c. 34, s. 40.